



## **National Association of Conservation Districts**

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Comments on the EPA Draft Chesapeake Bay TMDL (Docket ID No. EPA-R03-OW-2010-0736)

The National Association of Conservation Districts (NACD) represents 3,000 local conservation districts across the country and on the Pacific Islands. These districts are local units of government established under state law to carry out natural resource management programs at the local level. Seventeen thousand conservationists serve on their governing boards. Conservation districts work with state and local governments, agricultural producers, forest landowners, homeowners and developers to carry out conservation programs that protect our streams, rivers and lakes.

As conservationists, we fully support the common goal of a cleaner, healthier Chesapeake Bay watershed. We are working with landowners at the ground level to prevent pollutants from reaching waterways. Landowners have already implemented many environmental best management practices (BMPs), which have significantly reduced nutrient and sediment loadings in the Chesapeake Bay watershed over the past 25 years. These conservation and agronomic measures have enabled farmers to responsibly manage nutrients from fertilizer and manure and minimize soil loss from farmland.

NACD is concerned that the Draft TMDL fails to acknowledge this success. In order to encourage continued progress in the Bay, the TMDL should accurately reflect agriculture's contribution to conservation in the Bay. To encourage continued progress, watershed jurisdictions should work closely with producers and landowners to ensure they have the resources necessary for success – rather than imposing federal mandates.

USDA's recent draft report, "Assessment of the Effects of Conservation Practices on Cultivated Cropland in the Chesapeake Bay Region," underscores the fact that producers are indeed making good progress. Out of the region's actively-cropped 4.3 million acres, it found that farmers were actively implementing erosion control and nutrient management practices on more than 4.1 million acres, or 96 percent of the total. As a result, the region's rivers and streams have seen a 64 percent reduction in sediment pollution, a 36 percent reduction in nitrogen pollution and a 43 percent reduction in phosphorus pollution.

The draft report also indicated that work remains to be done to reduce nonpoint sources of pollution and improve water quality in the Bay. Landowners are eager to work with the Bay states, the Environmental Protection Agency (EPA), conservation districts and other stakeholders to continue improving management of all nutrient sources. To encourage additional best management practices, these efforts should be voluntary, locally-led and incentive-based.

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The fact that more conservation practices are needed to achieve their full potential is a reflection of the unique challenges of farming in the region – challenges that are quite similar to those the Bay faces as a result of its 16.6 million and growing population. This does not reflect a lack of commitment and conservation effort on the part of farmers.

While we continue to look for ways to improve, misguided federal regulation will ultimately do more harm than good. Forcing producers to comply with unattainable and unfunded mandates, based on faulty information about agriculture's actual contribution to the Bay, will only cause frustration, and result in significant economic and social impacts. To truly move forward, EPA needs a plan that is attainable, provides realistic benchmarks and funding and takes into account the unique, demographic pressures of the region.

EPA acknowledges that the "Chesapeake Bay TMDL is the largest, most complex TMDL in the country, covering a 64,000-square-mile area in seven jurisdictions." EPA is proposing allocations for three pollutants in 92 water-body segments. Even EPA admits that this extraordinarily complex TMDL is based on a flawed model, and has indicated it plans to make changes to the model in 2011. Even so, EPA plans to issue a TMDL that will have significant regulatory consequences.

EPA is relying upon an untested and highly imperfect model of the Bay, including incomplete and incorrect information about agricultural practices in the region and their water quality performance. EPA's model fails to acknowledge BMPs employed by the agriculture community outside of cost-share programs. Since the pollution reductions and the costs associated with meeting them will be based on these model outputs, the accuracy of these numbers has very real consequences on the livelihood of producers and landowners in the region.

To address this deficiency, NACD is working closely with state governments to develop an accurate data collection system, which will capture the large number of farmers and landowners voluntarily implementing conservation practices in the Bay region. NACD encourages EPA to support this effort and incorporate this data into the EPA Bay model.

We are concerned that EPA has proposed pollutant reductions that are not realistic nor economically or technically feasible, and has failed to quantify the associated costs and benefits. Before establishing a final TMDL, the agency should consider the economic and social impacts, providing transparent information regarding the cost of proposed water quality standards. The EPA should not move forward with a TMDL that is bound to fail due to unrealistic costs. NACD encourages the EPA to set achievable water quality standards and to fully take into account the economic and technical feasibility of reaching these goals.

The Clean Water Act (CWA) clearly requires states to establish TMDLs for impaired waters, and only in the absence of an acceptable state TMDL may EPA directly establish one. EPA is exceeding its authority by proposing to establish a TMDL without first waiting for state action, and is encroaching on state authority by doing so. EPA has asserted it has the authority to issue a

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TMDL over the objections of a state. However, the CWA requires EPA to go through a formal process to disapprove a state's TMDL, and EPA has failed to do this.

Nothing in the CWA gives EPA the authority to approve, disprove or change state watershed implementation plans (WIPs). Despite the fact that EPA does not have this authority, the agency has already rejected several Bay region states' TMDL implementation plans for failing to meet specific requirements. Through the use of backstop allocations in the Draft TMDL, the EPA attempts to force TMDL implementation measures on states by "assuming" them.

We're extremely concerned by EPA's attempts to eliminate the important role of state and local governments in the TMDL process. States – rather than the federal government – are best equipped to determine the best methods of reaching water quality standards and effectively implement TMDLs at the local level.

NACD is also concerned by EPA's efforts to pressure states into compliance through the use of backstop actions, including the redirecting of EPA grants. This is a troubling departure from the state and federal cooperation envisioned by the CWA. Under the CWA, states are responsible for carrying out CWA programs, and EPA does not dictate how water quality standards are met.

We strongly oppose EPA's top-down, regulatory approach and its counter-productive restrictions that would not only limit opportunities for agriculture operations, but threaten to put many out of business. It is important that EPA gives locally-led efforts an opportunity to succeed. EPA's focus should be to provide resources and tools—including financial and technical assistance—needed for successful state and local Chesapeake Bay watershed efforts. NACD encourages EPA to work collaboratively with local communities and stakeholders, instead of relying solely on regulatory and enforcement tools. This investment—along with appropriate conservation incentives—will provide for the most successful implementation of conservation strategies and best management practices to accomplish these vital goals.

Conservation districts are committed to making a difference in the Chesapeake Bay. With 121 districts covering the Bay watershed, our ability to work with landowners and local communities to implement conservation practices and address both rural and urban nonpoint source issues is unrivaled. NACD and our members look forward to providing leadership and support toward ongoing Chesapeake Bay restoration efforts.

Sincerely,



Steve Robinson  
President

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